IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-1496

CHARLES CARMEN MANCINI,
Petitioner,

versus

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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The Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit entered on January 26, 1977, and a Motion for Rehearing and Rehearing En Banc denied on March 29, 1977.

CITATIONS TO OPINIONS BELOW

The Opinion of the Court of Appeals is reproduced and attached to this Brief as "Appendix A."

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. Section 1254.

QUESTION PRESENTED

Where this Court upheld the constitutionality of Section 891, et seq., Title 18 U.S.C.A. (the so-called "Loan Shark Act"), in *Perez v. United States*, 402 U.S. 146, on the finding that "loan sharks" are members of a "class which engages in extortionate credit transactions as defined by Congress and the description of that class has the required definiteness", and further, that Congress made a reasonable finding that "loan sharking" affects interstate commerce; may the lower courts extend such holding to encompass the collection of a gambling debt where the defendant is not a member of a class which engages in "extortionate credit transactions" as defined by Congress, and where further, Congress made no reasonable finding that gambling, per se, affects interstate commerce?

STATUTES INVOLVED

The following statutes are involved:

U.S.C.A. Title 18:

Section 891. *Definitions and rules of construction.*

. . .

(6) An extortionate extension of credit is any extension of credit with respect to which it

is the understanding of the creditor and the debtor at the time it is made that delay in making repayment or failure to make repayment could result in the use of violence or other criminal means to cause harm to the person, reputation, or property of any person.

(7) An extortionate means is any means which involves the use, or an express or implicit threat of use, of violence or other criminal means to cause harm to the person, reputation, or property of any person.

Section 892. *Making extortionate extensions of credit.*

(a) Whoever makes any extortionate extension of credit, or conspires to do so, shall be fined not more than $10,000 or imprisoned not more than 20 years, or both.

Section 894. *Collection of extensions of credit by extortionate means.*

(a) Whoever knowingly participates in any way, or conspires to do so, in the use of any extortionate means

(1) to collect or attempt to collect any extension of credit, or

(2) to punish any person for the nonrepayment thereof,

shall be fined not more than $10,000 or imprisoned not more than 20 years, or both.

STATEMENT OF THE CASE

Mancini was a gambler who was convicted for using extortionate means to collect a gambling debt, in two counts (conspiracy and substantive) in violation of Section 894, Title 18, U.S.C.A.

REASONS FOR GRANTING THE WRIT

I.

The Fifth Circuit in the Subject Case Has Decided an Important Question of Federal Law Which Has Not Been, But Should Be, Settled by This Court.

This Court decided in *Perez v. United States*, 402 U.S. 146, 28 L.Ed.2d 686, 91 S.Ct. 1357, that Title 18, Section 891 (the so-called "Loan Shark Act") was constitutional as applied since Perez, a "loan shark", was clearly "a member of the class which engages in extortionate credit transactions as defined by Congress and the description of that class has the required definiteness", *Perez*, at U.S. 153, L.Ed.2d 691.

This Court has not embraced the issue as to whether or not the application of the "Loan Shark Act" is constitutional when applied to transactions involving the use of extortionate means to collect an extension of credit, regardless of the nature of such credit extension.

II.

The Fifth Circuit Has Decided a Federal Question in a Way in Conflict with The Applicable Decision of this Court.

This Court, in *Perez v. United States*, 402 U.S. 146, upheld the constitutionality of Sections 891, et seq., Title 18, U.S.C.A., because the Court found that Perez, a "loan shark", was clearly "a member of the class which engages in extortionate credit transactions as defined by Congress and the description of that class has the required definiteness", *Perez*, at U.S. 153. Mancini, the Petitioner, a gambler who used extortionate means to collect a gambling debt, is *not* a member of a class which engages in extortionate credit transactions as defined by Congress. This may be seen by the express definition of an extortionate extension of credit, Section 891(6), Title 18, U.S.C.A.

Mancini was convicted for Section 894, the constitutionality of which was not analyzed by this Court in *Perez v. United States*, 402 U.S. 146.

The *Perez* Court determined that Congress had made a reasonable finding that "loan sharking" affected interstate commerce. The courts now seek to extend such finding into the area of gambling, per se, as affecting interstate commerce. That gambling, per se, does not affect interstate commerce in contemplation of Federal legislation is clear from the enactment of Section 1955, Title 18, U.S.C.A. That is, said Section shows that gambling must necessarily reach certain substantial proportions as a condition precedent to a finding that it affects interstate commerce.

It is certainly not necessary to incorporate Section 894, Title 18, U.S.C.A., into the "Loan Shark Act" in order to prevent the evils of "loan sharking". Mancini concedes that if it were necessary to incorporate Section 894 in the "Loan Shark Act" in order to prevent "loan sharking", then his cause would be without merit. (See *Westfall v. United States*, 274 U.S. 256, 259.)

There being no finding by Congress that the collection of debts by extortionate means affects interstate commerce and people who use extortionate means to collect debts not being members of a class which engage in "extortionate credit transactions" as defined by Congress (Section 891, Paragraph 6, Title 18, U.S.C.A.), Section 894, Title 18, U.S.C.A. is, per se, unconstitutional.

CONCLUSION

Congress and the courts, on the basis of this Court's holding in *Perez v. United States*, 402 U.S. 146, that "loan sharking" affects interstate commerce, have extended the ambit of the "Loan Shark Act" impermissibly. To suggest that it is necessary, in order to prevent the evils of "loan sharking", to classify as a Federal crime the extortionate collecting of *any* extension of credit is stretching the limited contours of rationality beyond recognition. The alarming trend of ever-increasing Federal jurisdiction in the area of law enforcement need not be nourished by extensions absent constitutional bases.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that I have this day served a copy of the within and foregoing Petition for Writ of Certiorari on Mr. Ivan Michael Schaeffer, Attorney, Appellate Section, Criminal Division, United States Department of Justice, P. O. Box 899, Washington, D.C. 20530, by depositing same in the United States mail in an envelope properly stamped and sealed.

This the ___ day of April, 1977.

THEODORE S. WOROZBYT
Attorney for Petitioner

APPENDIX "A"

UNITED STATES of America,
Plaintiff-Appellee,

v.

Ronald Edison ROBERTS, a/k/a "Ron Roberts," and Charles Carmen Mancini, Defendants-Appellants.

No. 76-1076.

United States Court of Appeals, Fifth Circuit.

Jan. 26, 1977.

Appeals from the United States District Court for the Northern District of Georgia.

Before AINSWORTH and RONEY, Circuit Judges, and ALLGOOD,* District Judge.

AINSWORTH, Circuit Judge:

Appellants Roberts and Mancini were convicted on both counts of a two-count indictment, charging them with conspiracy to collect an extension of credit by use of extortionate means, and with use of extortionate means to collect an extension of credit, in violation of 18 U.S.C. §§ 2, 894. The charges grew out of an attempt by Mancini, a bookmaker, and his codefendant, Roberts, to collect on a gambling debt owed Mancini by one David Madison. Appellants raise three issues on appeal.

*** Chief Judge for the Northern District of Alabama, sitting by designation.**

First, Roberts alleges error in the findings and conclusions of two federal magistrates, adopted by the trial court herein, with respect to the jury-selection process in the Northern District of Georgia, under which the members of his petit jury panel were selected. Roberts challenges the process as being violative of the Jury Selection and Service Act of 1968, 28 U.S.C. § 1861 *et seq.*, and the local jury-selection plan. The same issue is raised in *United States v. Davis*, 5 Cir., slip opinion 75-3747, page 1054, ___ F.2d ___, which we also decide today. We incorporate herein the holding of that opinion as to jury selection and, accordingly, reject appellant's argument. Second, appellant Mancini challenges his conviction on the ground that 18 U.S.C. § 894, pertaining to the collection of extensions of credit by extortionate means, was not directed to the collection of gambling debts. Third, Roberts objects to the trial court's instruction to the jury on the issue of specific intent.

The extortionate-credit victim, Madison, was employed by a supermarket chain in Atlanta, Georgia. He met Mancini in September 1974 and acquired a betting number from an associate of Mancini's. Thereafter, Madison began placing bets on sports events, and would meet Mancini on a weekly basis to settle up their account. Madison became indebted to Mancini for the week ending February 15, 1975, after which time he quit betting. According to Madison, the amount owed was $420, while Mancini testified that the amount was $4,020. Madison did not pay Mancini the following week, as had been their custom, and, in fact, the debt remained unpaid for several weeks. Madison testified that Mancini spoke to him about payment of the debt and, when Madison said that he did

not have the money and would require more time to pay it, Mancini said that he was going to turn the debt over to someone else. Shortly thereafter, Roberts contacted Madison. Madison testified that Roberts spoke to him on a number of occasions, both in person and on the telephone, and that Roberts threatened him with physical violence if he did not pay the debt. At trial, there was also a tape recording of a telephone conversation introduced into evidence in which Roberts threatened Madison with harm to his person, his wife's person and his reputation. Furthermore, Madison testified, Roberts informed him that the debt was going up $200 a day, and later told him that the debt had gone up to $4,020. Mancini testified that he did not threaten Madison and that he (Mancini), assuming Madison might respond more positively to a stranger, employed Roberts to try to collect the debt. Roberts was to collect a 25% commission on the amount he collected. Mancini further testified that he did not agree with Roberts that threats would be used in attempting to collect the debt. Roberts admitted making the telephone call, but denied that he intended to threaten or to harm anyone. He attributed his remarks to drinking, which he said exacerbated his diabetic condition, thus making him high.

The statute penalizes conspiracy or knowing participation "in any way . . . in the use of any extortionate means . . . to collect or attempt to collect *any* extension of credit." 18 U.S.C. § 894(a)(1) (emphasis added.) The chapter on extortionate credit transactions further provides:

> (1) To extend credit means to make or renew *any* loan, or to enter into *any* agreement, tacit or express, whereby the repayment

or satisfaction of *any debt or claim*, whether acknowledged or disputed, valid or invalid, and however arising, may or will be deferred.

* * * * *

(7) An extortionate means is any means which involves the use, or an express or implicit threat of use, of violence or other criminal means to cause harm to the person, reputation, or property of any person.

Id. § 891 (emphasis added).

The broad statutory language plainly encompasses a debt arising out of a gambling transaction. *United States v. Andrino*, 9 Cir., 1974, 501 F.2d 1373; *United States v. Briola*, 10 Cir., 1972, 465 F.2d 1018, *cert. denied*, 409 U.S. 1108, 93 S.Ct. 908, 34 L.Ed.2d 688 (1973); *United States v. Keresty*, 3 Cir., 1972, 465 F.2d 36, *cert. denied*, 409 U.S. 991, 93 S.Ct. 340, 34 L.Ed.2d 258. In fact, the enactment has been applied specifically to a debt emanating from a bookmaking operation. *See Briola, supra*. The legislative history of the statute, furthermore, shows a congressional intent to include gambling within the statutory proscription. *See* H.R.Rep. No. 1397, 90th Cong., 2d Sess. 31 (Conference Report), *reprinted in* [1968] U.S.Code Cong. & Ad.News, pp. 2021, 2029. Appellant argues that the statute reaches only loansharking activity. The cases offered in support of that proposition[1] all involved loansharking

1 *United States v. DeCarlo*, 3 Cir., 1972, 458 F.2d 358, *cert. denied*, 409 U.S. 843, 93 S.Ct. 112, 34 L.Ed.2d 83; *United States v. Fiore*, 1 Cir., 1970, 434 F.2d 966, *cert. denied*, 402 U.S. 973, 91 S.Ct. 1659, 29 L.Ed.2d 137 (1971); *United States v. DeStefano*, 2 Cir., 1970, 429 F.2d 344, *cert. denied*, 402 U.S. 972, 91 S.Ct. 1656, 29 L.Ed.2d 136 (1971); *United States v. Biancofiori*, 7 Cir., 1970, 422 F.2d 584, *cert. denied*, 398 U.S. 942, 90 S.Ct. 1857, 26 L.Ed.2d 277.

and, therefore, referred to such activity; however, there is nothing in those cases which suggests that Congress' concern was exclusively with loansharking. In *Perez v. United States*, 402 U.S. 146, 91 S.Ct. 1357, 28 L.Ed.2d 686 (1971), upon which Mancini also relies, the Supreme Court held that Congress could regulate "extortionate credit transactions" as a "class of activities." 402 U.S. at 153-54, 91 S.Ct. at 1361. The reasoning of *Perez* and its progeny, *e.g., Andrino, supra; United States v. Annerino*, 7 Cir., 1974, 495 F.2d 1159; *Keretsy, supra*, makes clear that the instant transaction is within the covered class; the constitutionality of the statute as so applied has been established since *Perez*.

Roberts contends that the district court's instruction to the jury on specific intent improperly shifted to the defendant the burden of proof as to this issue. Roberts concedes that he made a threatening phone call to Madison which was monitored by the FBI and played at trial. His sole defense is lack of the requisite intent. The disputed charge instructed the jury as follows:

> [I]t is reasonable to infer that a person ordinarily intends the natural and probable consequences of facts [sic] knowingly done or knowingly omitted, and so unless the contrary appears from the evidence, you, the jury, may draw the inference that the accused and each of them intended all the consequences which one standing in like circumstances and possessing like knowledge should reasonably have expected to result from any act knowingly done or knowingly omitted.

Appellant relies principally on *Mann v. United States*, 5 Cir., 1963, 319 F.2d 404, *cert. denied*, 375 U.S. 986, 84 S.Ct. 520, 11 L.Ed.2d 474 (1964), a case in which this court held the giving of the same charge as the one here at issue to be erroneous where the "overall effect" therein was "to place a burden upon the defendant to produce evidence to overcome a presumption of guilt." *Id.*, 319 F.2d at 410. *Mann* offers no solace to Roberts, however, in light of *United States v. Duke*, 5 Cir., 1976, 527 F.2d 386, *cert. denied*, ___ U.S. ___, 96 S.Ct. 3177, 50 L.Ed.2d 1190 (1976), a case in which we held last year that the giving of the *Mann* charge in a context similar to that today before us did not constitute reversible error.[2] A "jury charge is to be read and tested as a whole, and not by a single isolated sentence." *Id.*, 527 F.2d at 392; *United States v. Wilkinson*, 5 Cir., 1972, 460 F.2d 725, 732. The trial judge inserted in his charge several statements[3] that placed the burden of proof on the Government and that we have held to be factors weighing against reversal of a conviction on the basis of the *Mann* charge. *Duke, supra*, 527 F.2d at 392-93. Finally, considering, as we must, the type of case and nature of the evidence, *id.* at 393; *Wilkinson, supra*, 460 F.2d at 733, particularly the undisputed threatening phone call made by Roberts,

2 The other cases relied upon by appellant, *United States v. Durham*, 5 Cir., 1975, 512 F.2d 1281, *cert. denied*, 423 U.S. 871, 96 S.Ct. 137, 46 L.Ed.2d 102; *United States v. Jenkins*, 5 Cir., 1971, 442 F.2d 429; *Helms v. United States*, 5 Cir., 1964, 340 F.2d 15, *cert. denied*, 382 U.S. 814, 86 S.Ct. 33, 15 L.Ed.2d 62 (1965), illustrate the erosion, rather than the reinforcement, of the *Mann* rule.

3 For example, instructions that the law presumes a criminal defendant to be innocent of crime; that the presumption of innocence alone is sufficient to acquit a defendant unless the jury is satisfied beyond a reasonable doubt of defendant's guilt; that the burden is always upon the Government to prove guilt beyond a reasonable doubt; and that the burden never shifts to a defendant to produce any witnesses or any evidence.

"the jurors were not reduced solely to presuming intent as they were in *Mann*." *Wilkinson, supra*, 460 F.2d at 733. The giving of the challenged charge did not constitute reversible error in the instant case.

AFFIRMED.